

(1) Which are maintained by an employer primarily for the purpose of providing benefits for a select group of management or highly compensated employees, and

(2) For which benefits (i) are paid as needed solely from the general assets of the employer, (ii) are provided exclusively through insurance contracts or policies, the premiums for which are paid directly by the employer from its general assets, issued by an insurance company or similar organization which is qualified to do business in any State, or (iii) both.

[40 FR 34533, Aug. 15, 1975]

§ 2520.104-25 Exemption from reporting and disclosure for day care centers.

Under the authority of section 104(a)(3) of the Act, day care centers are exempted from the reporting and disclosure provisions of part 1 of title I of the Act, except for providing plan documents to the Secretary upon request as required under section 104(a)(1) of the Act.

[40 FR 34533, Aug. 15, 1975]

§ 2520.104-26 Limited exemption for certain unfunded dues financed welfare plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report and (ii) furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan description to participants and beneficiaries and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) Filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM-1 or LM-1A, together with a copy of the em-

ployee organization constitution or by-laws in which the plan is described, and

(ii) Filing is made of any document furnished to participants and beneficiaries, in accordance with paragraph (a)(3) of this section.

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM-2 or LM-3, pursuant to the LMRDA and regulations thereunder.

(3)(i) The plan meets the requirements for furnishing a summary plan description of § 2520.104b-2(f), except the requirement of paragraph (f)(1) of that section to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or are subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description; *Provided, That:*

(A) The supplement required by § 2520.104b-2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or are subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the funded or unfunded status of the plan.

(b) *Application.* This exemption is available only to welfare benefit plans maintained by an employee organization, as that term is defined in section

3(4) of the Act, paid for out of the employee organization's general assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) *Limitations.* This exemption does not exempt the administrator from any other requirement of part 1 of title I of the Act.

[42 FR 37184, July 19, 1977]

§ 2520.104-27 Alternative method of compliance for certain unfunded dues financed pension plans maintained by employee organizations.

(a) *Scope.* Under the authority of section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report and (ii) furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan description to participants and beneficiaries receiving benefits and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) Filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM-1 or LM-1A, together with a copy of the employee organization constitution or by-laws in which the plan is described, and

(ii) Filing is made of any document furnished to participants and beneficiaries, in accordance with paragraph (a)(3).

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM-2 or LM-3, pursuant to the LMRDA and regulations thereunder.

(3)(i) The plan meets the requirements for furnishing the summary plan description of § 2520.104b-2(f) except the

requirement of paragraph (f)(1) of that section to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or are subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description *Provided, That:*

(A) The supplement required by § 2520.104b-2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or are subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the status of the plan.

(b) *Application.* This exemption is available only to pension benefit plans maintained by an employee organization, as that term is defined in section 3(4) of the Act, paid for out of the employee organization's general assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) *Limitations.* This exemption does not exempt the administrator from any other requirement of part 1 of title I of the Act.

[42 FR 37184, July 19, 1977]